

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**October 17, 2000**

<b>IN RE:</b>	)	
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<b>BELLSOUTH TELECOMMUNICATIONS INC.'S</b>	)	<b>DOCKET NO.</b>
<b>TARIFF FOR CONTRACT SERVICE</b>	)	<b>99-00600</b>
<b>ARRANGEMENT (TN 99-4663-00) TO OFFER</b>	)	
<b>DISCOUNT BASED ON REVENUE COMMITMENT</b>	)	

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**ORDER GRANTING APPROVAL OF BELLSOUTH CONTRACT SERVICE  
ARRANGEMENT (TN 99-4663-00)**

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This matter came before the Tennessee Regulatory Authority ("Authority") at a regularly scheduled Authority Conference on September 28, 1999 on the tariff filing of BellSouth Telecommunications, Inc. ("BellSouth") for approval to offer Contract Service Arrangement No. TN 99-4663-00 ("CSA"). BellSouth filed Tariff No. 99-00600 on August 17, 1999, with a proposed effective date of September 16, 1999.

In TRA Docket Nos. 99-00210 and 99-00244, BellSouth provided evidence through the testimony of its witness, Randall L. Frame, that BellSouth based its decision to offer a customer a CSA on the presence of competitive offers. The Directors approved the CSAs in Docket Nos. 99-00210 and 99-00244 recognizing that BellSouth followed this policy when offering CSAs to customers. In the executive summary of this Tariff, BellSouth asserted that the offering of this CSA to the customer in question was not arbitrary because the competitive offer standard was met.

On September 7, 1999, the Authority issued a data request to BellSouth. The Authority requested that BellSouth obtain an affidavit from the customer containing the following information: (1) the name of any competing providers making competitive offers to the customer; (2) the time period during which the competing providers identified in the previous request had negotiated the competitive offers; and (3) certification that BellSouth did not initiate negotiations regarding a contract service arrangement with the customer prior to this time period. In addition, the Authority asked whether the shortfall provisions apply upon early termination of the CSA and, in the event the answer was no, requested a contract amendment or letter of agreement stating that the shortfall provisions are not applicable upon early termination of the CSA.<sup>1</sup>

On September 10, 1999, BellSouth filed a letter wherein it refused to obtain an affidavit from the customer. In addition, BellSouth explained that the shortfall provisions do not apply upon early termination of the CSA. The letter was not signed by the customer and did not contain any indication that BellSouth sent the customer a copy of the letter.

At a regularly scheduled Authority Conference on September 14, 1999, the Directors considered Docket Nos. 99-00599 and 99-00600. BellSouth had refused to provide the requested affidavit regarding competitive alternatives in both dockets. During the consideration of Docket No. 99-00599, the Authority questioned BellSouth concerning its refusal to provide the requested affidavit from the customer. BellSouth responded by suggesting that it is difficult to obtain an affidavit of the type requested by the Authority

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<sup>1</sup> This request was consistent with the Authority's previous actions. During the deliberations of TRA Docket Nos. 99-00244 and 99-00510, the Directors approved each CSA with the contingency that BellSouth file an amendment to each CSA explicitly stating that the shortfall provisions do not apply upon early termination of the CSA.

from a customer before doing business with that customer. Chairman Malone made a motion to deny the CSA based on BellSouth's continued refusal to provide an affidavit from the customer. The motion was not acted on because BellSouth began to express a willingness to approach its customer. Following a lengthy discussion, the Directors unanimously agreed to defer a decision and suspend the CSA until the next conference in order to allow BellSouth to: (1) reconsider its refusal to provide an affidavit or (2) submit some other type of evidence acceptable to the Authority.<sup>2</sup>

Thereafter, upon consideration of the CSA in Docket No. 99-00600, the Authority applied the result reached in Docket No. 99-00599, but further admonished BellSouth with regard to a different issue. Specifically, the Authority expressed concern over the binding effect of BellSouth's unilateral statement in the September 10th letter that the shortfall provisions do not apply upon early termination of the CSA. The Authority asserted the position that the letter did not constitute an amendment to the CSA, contain the customer's signature, or indicate that BellSouth had provided the customer with a copy of the letter. BellSouth responded by stating that it had sent the customer a similar letter. The Authority then noted that BellSouth had not filed the customer's version of the letter with the Authority. In the end, the Authority directed BellSouth to provide it with a copy of the letter sent to the customer with regard to the interpretation of the shortfall provisions in addition to the affidavit or other evidence of competitive alternatives.

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<sup>2</sup> The Directors voted 3-0 to permit BellSouth an additional two weeks to provide some form of verification from the customer. Chairman Malone and Director Greer admonished BellSouth to provide within that time period "[an] affidavit or proper evidence as acceptable to our staff." Transcript of Proceeding, September 14, 1999, p. 41. Director Kyle stated that she would accept verification from the customer in some form less than an affidavit. *Id.* at 40.

On September 17, 1999, BellSouth filed a letter in response to the Authority's comments on the shortfall provisions. The letter stated that the shortfall provisions do not apply upon early termination of the CSA. In addition, the letter contained a signed statement from the customer stating that the customer had reviewed the letter and acknowledged that it accurately reflected the customer's understanding of the shortfall provisions.

On September 23, 1999, BellSouth filed a letter signed by BellSouth personnel only setting forth competitive alternatives available to the customer. In addition, the letter stated that the signing BellSouth personnel "reviewed this information with the Customer to ensure that [BellSouth's] understanding accurately reflects [BellSouth's] discussions with the Customer."

The Directors considered the merits of this matter at a regularly scheduled Authority Conference held on September 28, 1999 and made the following findings and conclusions:

1. The purpose of this CSA is to provide a Volume and Term Discount to the customer identified in the filing. Through this arrangement, BellSouth is offering a maximum eight and one-half percent (8.5%) discount on various eligible local exchange and private line services to a customer who has agreed to a minimum annual revenue commitment and a two (2) year contract term.

2. This CSA contains two termination provisions. The first relates to the termination of the underlying specific service and is linked to the tariff provision applicable to the underlying service. The second applies to the termination of the Volume and Term agreement. This termination provision requires the customer to pay a termination charge

equal to (1) the discounts received over the life of the contract or for the previous twelve (12) months, whichever is less, and (2) the prorated portion of the contract implementation and tracking costs calculated as follows: \$204,000 multiplied by the quotient of the remaining contract months divided by the total contract months. Because the first termination provision is contained in the underlying, previously approved tariff, it is only the second termination provision that is before the Authority in this docket.

3. Despite the expressed preference of the Directors, the September 23, 1999 letter is not signed by the customer. Nevertheless, this CSA is distinguishable from CSAs BellSouth may file in the future in that BellSouth has concluded negotiations with this customer and would necessarily have to go back to the customer to obtain an affidavit.<sup>3</sup> For this reason, the Authority reluctantly accepts the September 23, 1999 letter as verification of competitive alternatives. On a going-forward basis, however, BellSouth must provide more convincing proof of competitive alternatives. BellSouth shall provide documentation with CSA filings establishing that the customer has received other competitive opportunities. The documentation shall be signed by the customer and must be acceptable to the Authority.

4. The September 17, 1999 letter clarifying the fact that the shortfall provisions do not apply upon the customer's early termination of the CSA satisfies the concerns of the Authority.

5. No parties sought to intervene in this docket.

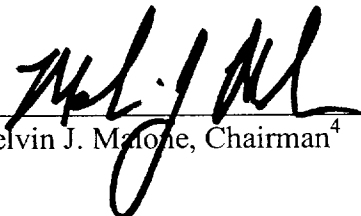
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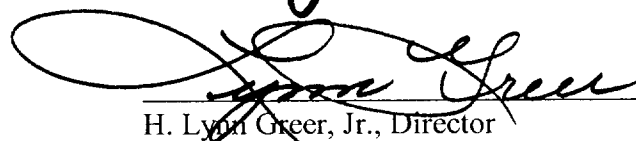
<sup>3</sup> Chairman Malone agreed to accept the September 23, 1999 letter after noting that there are no CSAs currently pending before the Authority. In addition, Chairman Malone stated that BellSouth's repeated argument that going back to the customer is burdensome was quickly losing its persuasive effect.

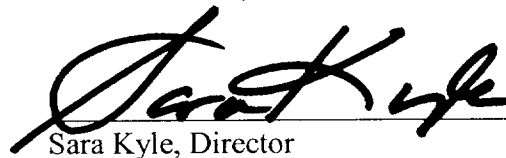
Based on the foregoing findings and conclusions, the Directors unanimously determined that the CSA in this docket should be granted.

**IT IS THEREFORE ORDERED THAT:**

1. BellSouth Telecommunications, Inc.'s Tariff No. 99-00600, which seeks approval of Contract Service Arrangement No. TN 99-4663-00, is hereby granted.
2. On a going-forward basis, BellSouth shall provide documentation with CSA filings establishing that the customer has received other competitive opportunities. The documentation shall be signed by the customer and must be acceptable to the Authority.

  
Melvin J. Malone, Chairman<sup>4</sup>

  
H. Lynn Greer, Jr., Director

  
Sara Kyle, Director

ATTEST:

  
K. David Waddell, Executive Secretary

<sup>4</sup> Chairman Malone noted that, generally, the underlying tariff termination provisions with respect to the specific services that may be used to meet the volume and term requirements of a Volume and Term CSA contain buyout clauses, sometimes amounting to a ninety percent (90%) or one-hundred percent (100%) buyout. Notwithstanding Chairman Malone's approval of this Volume and Term CSA, he remains of the opinion that tariff termination provisions, however triggered, containing such buyouts are so potentially anticompetitive as to warrant modification by the agency on a going-forward basis.